

**Virginia Commission on Immigration
DRAFT - MEETING MINUTES**

December 13, 2007

Senate Room B
General Assembly Building
900 East Broad Street, Richmond, Virginia

CALL TO ORDER: The December meeting of the Virginia Immigration Commission was called to order at 1:09 p.m.

PRESIDING: Senator Watkins

MEMBERS PRESENT: Dr. Rajul Malik, Ms. Wanda Hamilton, Mr. George Foresman, Reverend Gerry Creedon, Ms. Carmen Alicia Bernal, Delegate Jackson H. Miller, Senator John C. Watkins, Senator Richard L. Saslaw, Mr. Satya Akula, Dr. Venita Newby-Owens, Mr. Eliot Norman, Captain Eddie Reyes, Mr. Charles T. Griffith, Mayor Pranas A. Rimekis, Venita Newby-Owens, Delegate Robert G. Marshall,

MEMBERS ABSENT: Delegate Roslyn C. Tyler, Senator Jay O'Brien, Delegate Dwight C. Jones, Delegate C. Todd Gilbert

STAFF PRESENT: Secretary Marilyn Tavenner, Secretary of Health & Human Resources
Heidi Dix, Assistant Deputy Secretary of Health & Human Resources
Sindy Benavides, Director of Gubernatorial Appointments & Latino Liaison
Matt Gross, Virginia Department of Social Services Policy Analyst

MINUTES: (Watkins) Are there any corrections or additions for the September 25th minutes? (Foresman) I move to approve the minutes. (Saslaw) I second. (Watkins) The September minutes are approved.
(Watkins) Are there any corrections or additions for the November 13th minutes? (Foresman) I move to approve the minutes.
(Hamilton) I second. (Watkins) The November minutes are approved.

PRESENTATIONS: **Presenter #1: Matthew A. Conrad and Martin L. Kent, Office of the Attorney General**
"Aliens, Criminal Law and Public Benefits"
Please review presentation handout for presentation details.

Presentation Discussion

(Marshall) I can understand these different categories. How do state agencies identify a qualified alien? (Conrad) VA Code outlines a process by which immigration must be identified. It's enshrined in

section 63.2-503.1 which I will cover later in my presentation. (Marshall) What about school lunch and breakfast programs? Can illegal children use those? (Conrad) It is my understanding that all children are eligible for those programs regardless of legal status. (Miller) Last month the Department of Education stated that according to Plyler versus Doe schools cannot inquire to immigration status? I have read the opinion and see where schools cannot discriminate, but do not see that they cannot inquire. (Conrad) I came to no instance in that opinion where it said that they cannot inquire. (Marshall) Before 1965 if you were visiting or an ambassador, anyone born here of non-citizen parents was not a citizen, but Congress changed that in 66 or 67 to state that anyone born in the United States, regardless of the legal status of the parents are full-fledged citizens. (Conrad) I do not know but I can find that for you. (Marshall) The 14th amendment says born within the jurisdiction thereof. (Conrad) I think you can extrapolate from that kids have access irrespective of their status. (Creedon) With regards to children born in the country, I would like information on international requirements from international law regarding children born in the country. (Marshall) In the fall I asked for an informal opinion because Loudoun wanted an ordinance to require businesses to check legal status. I was told in an opinion from Stephanie Hammond that they cannot do that because it is adding to the burden of the 1986 law. (Kent) It appears that the narrow window involves the pre-emption of the initial issuance, not the subsequent follow-up. I can check for the committee. (Saslaw) How many requests do you know of that we have made to the federal government to come get them for immigration issues, and how many have they actually come and picked up? Because I have heard of a large number that we have called down with very few actually collected. (Kent) I think your summary is accurate. I think for 2007 there were 12,000 requests with 400 picked up. (Saslaw) What happens to them when they are picked up? (Kent) They are held for 72 hours. It is either the lesser of 72 hours or until Immigration and Customs Enforcement (ICE) determines if they will pick them. We have tried to deal with this with the Immigration Task Force to have ICE give us a list of offenses for which they will actually pick them up. (Saslaw) They seemed to make it clear that they will not pick people up for minor traffic offenses. (Kent) One major criterion is bed space. (Saslaw) I have heard they have 27,000 spaces nationwide, which would give Virginia about 500 spots. It seems like we are wasting a lot of manpower. (Kent) Just to follow up, the Crime Commission has come up with a solution that will not take money away from the state that deals with the reallocating with the per diem state and local law officials can keep from ICE. (Norman) Where do you think this commission can help your office without duplicating the work of the task force? (Kent) I can tell you we have fairly exhaustively looked at the criminal arena. In fact, three recommendations will be made

to this commission. I think the area of public benefits will address this commission. (Watkins) Have you tried to work directly with the federal government to address some of these problems with the 12,000 and only 400 picked up and other issues? (Kent) Yes sir, I have done that, and the Attorney General has done that through telephonic discussions and letters. A lot of their issues are preemption issues. Some issues involve the law needing to be clarified. I think we came to conclude that ICE has its problems, but one of the biggest is inadequate funding. We have also had numerous meetings with the crime commission with ICE officials. (Watkins) One of the rolls of this commission is to further elaborate how we interact with the federal government, and how we provide services with them. (Marshall) I would like to add that Prince William, Manassas, and Manassas Park requested training, but ICE cut back. There were 70 jurisdictions that made requests across the east coast, but only 1 training center in Savannah, Georgia with 24 slots for training. (Kent) As of a couple months ago, if you could get a large enough force, they would come do it on a regional basis. Maybe that's changed, but they would do that at one time.

Presenter #2: D.B. Smit, Virginia Department of Motor Vehicles
"Immigration Policy and DMV Services"

Please review presentation handout for presentation details

Presentation Discussion:

(Saslaw) Back on 9-11, it was my understanding that some of the hijackers had Virginia driver's licenses. (Smit) It was Virginia credentials, not necessarily driver's licenses. (Saslaw) They were all here legally, correct? (Smit) Yes, but we did not have a lawful presence law back in 2001, so those people had credentials that were legal for that time, but I cannot say if those people would have been here legally today. (Saslaw) Someone on a student on a student visa can get a driver's license, correct? (Smit) Yes (Saslaw) How about with a tourist visa? (Smit) You can if you have the proper documentation and pass the tests. (Marshall) I thought that Senator O'Brien's bill was prospecting so it would not apply to me because I was grandfathered in? (Smit) Most people are grandfathered in. It does affect people who had their license suspended, revoked, or expired, or who are new to the state. (Marshall) So when I waited four hours for a new tag, I will now wait eight hours? (Smit) With REAL ID, it might take you a whole day, or even a week to get approved, like with a passport. (Saslaw) Do you get many of those (notifications from localities that an individual's authorized stay in the US has been terminated)? (Smit) We got one from a locality. We asked for something on the localities letterhead for a formal allegation, and never heard back. (Miller) Based on that standard, would you be able to suspend that license, or just not renew it?

(Smit) Yes, we cannot suspend, just not allow to be renewed.

(Miller) So we can change that legislatively. I supposed it is because most jurisdictions do not even know they can do it. (Smit) I think it

has more to do with taking that extra step to make a formal allegation that can affect someone's rights. Localities are hesitant to go that far. (Marshall) You mentioned documents, Representative

Drake mentioned to me on Monday that Congress has tried to make available to DMV equipment that can assist with verifications on documents, but Virginia was not moving on this. (Smit) I spoke with

Representative Drake about this issue, but I could not pin down what she was actually taking about. We have received a lot of training from ICE, specifically for fraudulent document training. I do not know of anything free that they have been offered. I will follow up with her office to make sure we know what she's talking about.

(Marshall) Have you conveyed the extreme unlikelihood that you

will have a staff to implant REAL ID? (Smit) We have the money the General Assembly approved to help us implement Real ID. The problem is we still do not know what the regulations are. So we have not hired the people, or gotten the computer interfaces.

(Foresman) I think one thing the Commissioner is faced with a challenge. Sec. Chertoff and I talked about this yesterday. I do not think the feds will expect REAL ID to be fully implemented by May 2008, but underway. The challenge is we do not know how that

will be deified. (Bernal) What is the PIN number to renew a license? (Smit) For certain secure transactions we require a PIN number to make sure it is you we are dealing with over the internet.

(Bernal) How does DMV know the license go to a real person, not just an address? (Smit) We require a person to make a request, and then send the PIN to an address, so the only risk is that someone else at the address takes the number. (Bernal) How do you know that

people who renew are legal? (Smit) Because the law grandfathered in people here before January 1, 2004 we do not know if everyone from that time period is here lawfully. We do know that every license afterward was been sent to someone who is here legally.

(Watkins) When REAL ID goes into effect, you will not be able to renew over the internet. (Norman) Can you give us a rough idea on

how many people in Virginia have licenses, and how many people are driving without license? (Smit) We have 5.5 million driver's licenses issued in Virginia, but we do not have any numbers on your

other question. (Reyes) Do you know if the Motor Vehicle Association of America has a plan to bring in biometrics like an iris scan or digital fingerprint scan? (Smit) That is the standard on the

national level. Also, in Virginia, we are moving toward having a central issuance of driver's licenses. You will complete everything in the customer services center, and then you will get it mailed to you within three days. In the next 18 months everyone will have a license mailed to them. This new document will featured facial recognition biometrics. (Rimekis) Can you address what steps are

taking places to prevent non-citizens from registering to vote? (Smit) Because of H.B. 170, as of January 1, 2007 we are now required to give anyone who wants a driver's license or identification card the opportunity to vote. We do not register anyone to vote, we just give them the opportunity to register. We send that form to the voter's registrars, and they offer the person the opportunity to vote. As of January 1, 2007 we are required to ask if someone is a US citizen before giving them the voter registration forms. A list of people who check "no" is sent to the State Board of Elections. (Rimekis) But you just ask if they are citizens, you do not require proof of citizenship? (Watkins) I remember when I introduced a bill to require biometrics into the driver's license, but the House of Delegates killed it. (Norman) I would like to thank you for helping to reach out in 2004 to help people renew regulations with the new process. Can you explain to the commission how you perform an elevated review? (Sharon Brown, DMV) We currently have 8 people dedicated to elevated review. They had 10,000 inquired in the last fiscal year. That group has developed strong relationships with ICE and refugee groups.

Presentation #3: Colonel Flaherty, Virginia State Police
"Immigration Commission Presentation"

Please review presentation handout for presentation details.

Presentation Discussion:

(Marshall) I am interested in data. I have seen traffic summonses. I do not remember seeing a provision for a check-off box for "Does not speak English." (Flaherty) We do not note that for basic traffic stops. The arrest record for all class one misdemeanors and felonies requires place of birth and citizenship. (Marshall) How difficult would it be to record on a summons if someone doesn't speak English? (Flaherty) At first blush I do not see what value that would be to us. Maybe it will help another agency, but our trooper has to deal with that immediately. In most of our jurisdictions we have a list of people we can call upon for different languages. (Marshall) If there is a violation by someone who is foreign born, and you send that to the central law enforcement center, what happens? (Flaherty) The law enforcement support center may ask us to hold someone, or come down to see someone. (Flaherty) All law enforcement in Virginia enter into that data to the center. (Marshall) Of the 37,000 who are foreign-born, what percent of the total is that? (Flaherty) I don't have that number. (Marshall) I would like to know the percentage of the total. (Marshall) Why can the 5 week training program not be done with distance learning? Our jail intake people in Manassas were trained in Herndon. (Flaherty) The first I heard of that was earlier. In 2004, ICE told us they would send instructors to you if you have a large number and the facility, but your people

would still be tied up for 5 weeks. There is a certain segment of this which required cultural related classes for people. They would deputize a certain number that we would select of state police offices. We thought in 2004 that it may be good for us to have this authority when working gang and terrorism related cases, up to about 35 folks. We decided to see what would happen from HB 570 because it would require a lot of recourses. We explored it again recently, but because of our resources and our current relationship with ICE, all it would do is increase our paperwork. Jurisdictions who currently use 287g say it takes officers off the road for three to four hours for paperwork. (Saslaw) If you are connecting on 92%, how do we get in a position where other agencies get 12,000 and only 400 are picked up? (Flaherty) That may be because they are just inquiries, not hits. (Saslaw) Of these 385, were these hard offenses? (Flaherty) For the state offenses, most were drunk driving and beyond. They could be a traffic offence if they have something else pending. It may have been something on its face that appeared to be trafficking. (Miller) Do the state police have a policy in place at to where troopers are to inquire into immigration status? (Flaherty) No sir. From a traffic stop perspective, we expect every stop to be a n investigative stop. It can be as simple as looking for criminal activity. If they make a stop, and all the documentation appears to be valid, and it is not indicated that it is anything more than a stop they do not go further. (Miller) How did your agency come to this number? Was it a case of enough troopers decided to report? Are there times they stop but do not investigate? (Flaherty) What we asked them to do is to report when they contact ICE. (Watkins) There is no probable cause to carry it further. (Flaherty) Correct. (Miller) Could it be a case of no interest of the trooper to follow-up? He discharged his duties by completing the stop. The trooper might think he is illegal, but ICE is not interested and there is no policy in place to require that report if you came in contact with someone illegal. (Flaherty) That could be the case. (Creedon) You were sharing information with regard to a consensual violation, do you educate undocumented people on their rights to remain silent? (Flaherty) We have an officer who has a program with the Latino community where he does a lot of Q & A. I do not know if he specifically covers that, but I think he does. (Creedon) We talk about speeding up the 5 week training, but how can we teach 175 categories of federal law that quickly? I work with lawyers dealing with federal immigration law, and they resent other lawyers who try and get involved who have not spent years training in immigration law. To expect officers to learn all federal law in 5 weeks seems a bit unrealistic. (Flaherty) I agree. (Miller) A comment to the Father and Colonel: I would hope that, speaking as an officer, we would not be training people about their right to remain silent. It is our job to get information out of them and the read them their rights. (Akula) You said 72 hours to hold in a cell until ICE takes over. Is that the

case for gangs too? (Flaherty) If we make the arrest with the premise being H.B. 570, then we have to release after 72 hours. However, most of the cases we are involved in use a different state law as its premise, so they are held according to that standard rather than the H.B. 570 standard. (Watkins) I was interested in your last slide relating to total summons and arrests. Only 4.75 percent were Hispanics or Latinos. How many arrests actually occur with individuals illegally in this country? (Flaherty) I do not know. (Watkins) The fact that we sent 329 from March 1, 2007 through Nov 30, 2007, 9 months, that can be extrapolated to 400 a year. (Flaherty) And that does not count the criminal cases, so the number can be larger. (Watkins) So the number is probably higher than 27,000. (Marshall) Addressing the last slide, where is there an indication on the summons to see if someone is Latino? It is not on the summons. (Flaherty) This is a result of our informal data form our bias recording. It is a very elementary procedure. They turn in a sheet to us that deals with the demographic of the people they have interacted with. (Marshall) So it is on a separate sheet, not on the summons? (Flaherty) That is correct. (Watkins) This is to make sure we are not profiling, correct? (Flaherty) Yes. (Foresmen) You talked about 37,000 recorded sent to ICE, and what they do is validate and look for people who doesn't have legal presence. Can you find out the combined totals of VSP and local law enforcement referrals to ICE.?

NEXT MEETINGS: (Watkins) We have a meeting scheduled for January 4th. At that meeting the Weldon Cooper Center will make a presentation dealing with demographic changes and movements for migration and immigrations. We will also hear from the Crime Commission for their report, specifically on the recommendations they are sending to the General Assembly, and the ones they are sending to our commission. VACo and VML will present some information I asked them to collect, and we will hear from a business group. (Marshall) When will we be going out to different parts of the Commonwealth? (Watkins) It is our plan to have mental health and health in March and April. After that, employer groups and trade groups, and cultural groups. Then I think it would be appropriate to go out and have public hearings. I think we will need to hold one specifically in NOVA, one between here and NOVA, one in Tidewater, and one in the western part of the state. So probably late spring and early summer. (Creedon) (Watkins) Unless there is a strong objection from the commission, I would schedule down April 1. One other thing I would like to mention. As all of you know, this topic draws a lot of attention and emotion. I would caution people from speaking on behalf of the commission on this point in time. I think there is nothing wrong saying we are members and seeking input, but we're still in the information collection mode, so I would be careful with

regard to speaking on behalf of the commission. Please don't hesitate to bring it to the attention of groups you may be before to express that you are members of the commission and you are trying to delve in to issues and concerns.

ADJOURN: 3:49 PM

DRAFT